

REMARKS

In view of the foregoing amendments and following remarks, Applicant respectfully requests favorable reconsideration of this application.

This amendment accompanies a Request for Continued Examination filed in response to the Advisory Action dated October 12, 2006 and specifically addresses the issues that the Examiner raised in that Advisory Action.

The present invention is a computer program for determining whether to classify assets as capital assets or expensed assets. In accordance with the invention, assets are classified as capital or expensed assets by determining the average cost of all models of the given machine type to which the particular asset belongs and comparing that average cost to a predetermined minimum value. All assets of a machine type having an average value that is greater than or equal to the minimum capitalization value are classified as capital assets, while all assets of a machine type having an average value below the minimum capitalization value are classified as expensed assets.

Background

In the Final Office Action, the Examiner asserted that all of the recitations of the independent claims 1 and 9 are found in the book "Intermediate Accounting" (hereinafter "IA") with the qualification that IA does not disclose a computer program for performing the recited instructions/steps/procedures, but that U.S. Patent No. 6,047,267 to Owens et al (hereinafter Owens) teaches a computer program. Applicant respectfully traversed.

The Advisory Action included further explanation of the Examiner's reasoning in asserting the rejection based primarily on IA and appears to identify two intertwined issues that, if resolved, would lead to the allowance of the present claims. Particularly, the Advisory Action states:

For example, the Applicants remarked that "the decision whether to expense or capitalize the asset in IA has nothing whatsoever to do with the average cost of assets of a similar asset type". The Examiner disagrees because the average cost or fair market value of an asset, for example, Kelley Blue book value, is used to determine the value of an asset which is then used to make a decision of whether to expense or capitalize the asset. For example in page 518 IA discusses expensing items below \$500, therefore, the fair market value/Kelley Blue Book value is \$2000 then the asset is capitalized.

The issues raised in the Advisory Action are (1) whether the prior art discloses the exemplary situation described in the Advisory Action and (2) whether the claim language "assigning with respect to each of a plurality of machine types an average value of models of said machine type" and "if said average value for said machine type of said acquired asset is greater than or equal to said minimum capitalization value, classifying said asset as a capital asset and, if said average value for said machine type of said acquired asset is less than said minimum capitalization value, classifying said asset as an expensed asset" reads on the situation described in the Advisory Action in which the "average value" is the actual value of signs to the "acquired asset" that is being classified.

Specifically, in essence, the Examiner's position is that the act of assigning a value to the acquired assets itself is also the act of assigning an average value for a machine type of said acquired asset.

Such a conclusion is not supported by the prior art of record for at least two reasons. First, the scenario described in the Advisory Action, in which an owner of a

car assigns it a value based on its Kelley Blue Book value is not realistic and is certainly not found in the prior art of record. Particularly, while an individual may look to the Kelley Blue Book to determine what he should pay for the vehicle, the value that he will assign to that vehicle for tax and accounting purposes will not be the Kelley Blue Book value, but will be the actual purchase price of the vehicle. In fact, one would imagine that assigning the Kelley Blue Book value, rather than the purchase price would be improper accounting and probably illegal in most, if not all, jurisdictions. Even in a situation where the vehicle is purchased as part of an acquisition of a larger group of assets and in which the Kelley Blue Book was consulted to help assign a value to the vehicle, the value assigned to the vehicle would not simply be an average value because the total sum of the values assigned to each of the individual assets purchased collectively still must add up to the overall purchase price.

Even further, the Kelley Blue Book value is not even an average value of a mocking type, in any event. Specifically, the claims clearly recite that a "model" is a subset of a "machine type" and that the "acquired asset" is a single copy of a model of a machine type. In the Examiner's analogy, he relies on the determination of the value of the specific acquired asset as itself comprising the act of determining the average value of models of a particular machine type. Determining a value of the acquired asset using Kelley Blue Book does not constitute determining the average value of anything. Furthermore, even assuming for the sake of argument that it does involve determining an average value of something, it would be the average value of a particular model of a machine type, not the average value of a machine type.

For instance, determining the value of a particular automobile (e.g., a 2004 Honda Element EX with upgraded audio system, roof rack, ski rack, orange and gray exterior, black interior, and 21,367 miles on the odometer) using the Kelley Blue Book value is not equivalent to determining the average value of a model of a machine type, let alone the average value of a machine type itself (which is what is claimed). Trying to make this analogy as close as possible to the claim for sake of argument, the machine type might be considered to be “2004 Honda Element” and the model might be considered to be an “EX” model. In Kelley Blue Book, the value assigned to this vehicle is not the average value of all Honda Elements. In fact, it is not even the average value of 2004 Honda Elements of the EX model. Rather, the Kelley Blue Book value of a vehicle takes into account characteristics that are individual to each vehicle that could not possibly be considered attributes of the “machine type” or even the “model”. For instance, Kelley Blue Book considers the condition of the vehicle (Excellent/Good/Fair/Poor) and the miles on the vehicle. Therefore, the value that Kelley Blue Book assigns to the vehicle is not the average value of vehicles of that machine type or even of that model. Rather it has taken into consideration attributes unique to the vehicle.

In any event, there is nothing in the prior art of record that discloses, inherently or otherwise, the scenario described in the Advisory Action.

Secondly, the claims do not even read on the scenario described in the Advisory Action, in any event. As noted above, the independent claims now recite that the average price is determined independent of a value of the acquired asset. The described scenario actually involves determining the value of the acquired asset.

Thus, the claim language clearly distinguishes between determining the average value for a machine type and determining the actual value of a model of that machine type, e.g., the actual acquired asset itself. The Examiner's strained reading of the independent claims is precluded by the claim language.

Accordingly, claim 1 distinguishes over the prior art of record because the prior art does not suggest "assigning with respect to each of a plurality of machine types an average value of a model of said machine type independent of a value of said acquired asset" and "if said average value for said machine type of said acquired asset is greater than or equal to said minimum capitalization value, classifying said asset as a capital asset and, if said average value for said machine type of said acquired asset is less than said minimum capitalization value, classifying said asset as an expensed asset".

Independent claim 9 includes similar distinguishing language as that discussed above in connection with claim 1. Particularly, claim 9 includes the step "(7) comparing said average value found in step (6) to said minimum capitalization value and, if said average value for said machine type of said acquired asset is greater than or equal to said minimum capitalization value, classifying said asset as a capital asset and, if said average value for said machine type of said acquired asset is less than said minimum capitalization value, classifying said asset as an expensed asset".

Essentially, the Examiner's position is fundamentally based on the proposition that the determination of the value of an asset itself comprises determining the average value of models of that machine type. However, the independent claims do not read on such a scenario, particularly now that they expressly recite that the average value is determined "independent of a value of said acquired asset".

Furthermore and more importantly, let us not forget that the scenario described in the Advisory Action is not disclosed in IA or any other prior art or record. It was generated by the Examiner himself. Instead, the Examiner clearly described his understanding of how IA determines whether to expense or capitalize a cost item associated with an asset. Specifically, the Examiner very clearly describes that the decision is based on whether or not the asset increases the useful life of the machine or the number of units of product that the machine can produce. This has absolutely nothing to do with the fair market value of the asset, the average price of assets of that type or any minimum value.

Accordingly, Applicant respectfully requests the Examiner to withdraw all of the claim rejections since they are based on an erroneous analysis of the IA reference.

The secondary reference, Owens, does not provide the above-described teachings missing from IA. In fact, Owens has merely been cited for disclosing a computer program.

With respect to the dependent claims 2-8 and 10-18, they distinguish over the prior art of record for at least all of the reasons discussed above in connection with the independent claims. The tertiary reference, O'Brien does not contain the teachings are lacking from of the primary reference as discussed above.

Accordingly, all of the claims patentably distinguish over the prior art of record.

In view of the foregoing amendments and remarks, this application is now in condition for allowance. Applicant respectfully requests the Examiner to issue a Notice of Allowance at the earliest possible date. The Examiner is invited to contact Applicant's undersigned counsel by telephone call in order to further the prosecution of this case in any way.

Respectfully submitted,

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